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3 *NOT FOR PUBLICATION*

4 **UNITED STATES DISTRICT COURT**

5 **NORTHERN DISTRICT OF CALIFORNIA**

6
7 **JESSICA BOLTON,**

8 Plaintiff,

9 v.

10 **CALIFORNIA DEPARTMENT OF**
11 **CORRECTIONS AND REHABILITATION;**
12 **GAVIN NEWSOM, GOVERNOR OF THE**
13 **STATE OF CALIFORNIA; KATHLEEN**
14 **ALLISON, SECRETARY OF CALIFORNIA**
15 **DEPARTMENT OF CORRECTIONS AND**
16 **REHABILITATION; SERGIO BUSTOS;**
17 **GABRIEL LOPEZ; JOSE VALENCIA; ALLEN**
18 **BOWMAN; MARIAH ALVARADO; AND**
19 **EMMANUEL RAMIREZ.**

20 Defendants.

21 Case No. 4:21-cv-3466-YGR

22 **ORDER GRANTING IN PART AND DENYING**
23 **IN PART MOTION TO DISMISS**

24 Dkt. Nos. 14 and 16

25 Plaintiff Jessica Bolton is a mental health professional and staff psychologist at the Richard
26 J. Donovan Correctional Facility (“RJD”), which is part of the California Department of
27 Corrections and Rehabilitation (“CDCR”). (*See* Dkt. No. 1, ¶ 1) (“Complaint” or “Compl.”) This
28 action arises out of alleged retaliation against plaintiff after she witnessed and reported officers
using excessive force on an inmate. (*Id.* ¶ 26.) Plaintiff brings this action against defendants
CDCR; Governor Gavin Newsom; Kathleen Allison, (collectively, “Government defendants”),
Gabriel Lopez, Jose Valencia, Allen Bowman, Mariah Alvarado, Emmanuel Ramirez
(collectively, “custodian staff defendants”) and Sergio Bustos. (*Id.* ¶¶ 7-16.) Plaintiff brings nine
causes of action: (1) illegal intrusion on First Amendment right to free speech in violation of 42
U.S.C. § 1983; (2) retaliation for exercising First Amendment speech, Monell Action-based on
official policy, practice, or custom in violation of 42 U.S.C. § 1983; (3) retaliation for exercising
free speech, Monell Action-based on act of final policymaker in violation of 42 U.S.C. § 1983; (4)
retaliation for exercising free speech, Monell Action-based on ratification in violation of 42 U.S.C.

1 § 1983; (5) retaliation for exercising free speech, Monell Action-based on policy of failure to train
2 or supervise in violation of 42 U.S.C. § 1983; (6) retaliation in violation of California Labor Code
3 § 1102.5; (7) negligent hiring, retention, and supervision, (8) intentional infliction of emotional
4 distress; and (9) negligent infliction of emotional distress. (*See Compl.*)

5 Now before the Court are two motions to dismiss. The first motion is by the Government
6 defendants to dismiss all causes of actions brought against them. (*See Dkt. No. 14.*) The second
7 motion is by the custodian staff defendants to dismiss plaintiff's eighth and ninth causes of action
8 and plaintiff's request for injunctive relief. (*See Dkt. No. 16.*) The matter was fully briefed by the
9 parties. (*See also Dkt. Nos. 20-23.*)

10 Having carefully considered the papers submitted, the pleadings in this action, the oral
11 argument that took place during the August 10, 2021 hearing, and for the reasons set forth in full
12 detail on the record, the Court **GRANTS** the Government defendants' motion to dismiss and
13 **GRANTS IN PART AND DENIES IN PART** the custodian staff defendants' motion to dismiss. The
14 Court finds the following:

- 15 • With regards to the Government defendants' motion to dismiss, the Court **GRANTS** the
16 motion with respect to defendant CDCR because the CDCR is a state agency, and the
17 Eleventh Amendment bars claims in federal court against state agencies. *See Brown v.*
California Dept. of Corrections, 554 F.3d 747, 752 (9th Cir. 2009) (affirming district
18 court's finding that the California Department of Corrections was entitled to Eleventh
19 Amendment immunity; “[i]n the absence of a waiver by the state or a valid congressional
override, under the Eleventh Amendment, agencies of the state are immune from private
damage actions or suits for injunctive relief brought in federal court.) Thus, all of
20 plaintiff's claims against the CDCR, including plaintiff's request for injunctive relief, are
DISMISSED WITHOUT LEAVE TO AMEND.
- 21 • Similarly, plaintiff's claims for monetary damages against Governor Newsom and Allison
22 in their official capacities are also barred by the Eleventh Amendment. *Shaw v. State of*
Cal. Dep't of Alcoholic Beverage Control, 788 F.2d 600, 604 (9th Cir. 1986) (citing
23 *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984); *Kentucky v.*
Graham, 473 U.S. 159, 165–68 (1985) (holding that official capacity suits are effectively
24 suits against the entity that the individual represents); *Krainski v. Nevada ex rel. Bd. Of*
Regents of Nevada System of Higher Educ., 616 F.3d 963, 967 (9th Cir. 2010) (“Eleventh
25 Amendment immunity also shields state officials from official capacity suits.”). Thus,
plaintiff's first, second, third, fourth, and fifth claims against defendants Newsom and
26 Allison in their official capacities are **DISMISSED WITHOUT LEAVE TO AMEND.**
- 27 • To the extent those claims are brought against defendants Newsom and Allison in their
28 individual capacities, the Court also **GRANTS** defendant's motion to dismiss because

United States District Court
Northern District of California

1 plaintiff has not alleged sufficient facts to show how defendants participated, directed, or
2 had any knowledge of the allegations in the complaint. Instead, plaintiff just recites the
3 elements of the claims and argues in a conclusory fashion that defendants knew of the
4 custodial staff's conduct. Accordingly, plaintiff's first, second, third, fourth, and fifth
5 claims against defendants Newsom and Allison in their individual capacities are
6 **DISMISSED WITH LEAVE TO AMEND.**

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- For the same reasons stated above, plaintiff's claim for injunctive relief against defendants
12 Newsom and Allison are also **DISMISSED WITH LEAVE TO AMEND**. Plaintiff has failed to
13 allege sufficient facts to state any claim of unlawful activity by defendants Newsom and
14 Allison. Of the facts alleged to merit injunctive relief, none of them support plaintiff's
15 claim in her opposition that the Government defendants had anything to do with the
16 alleged conduct. Further, plaintiff failed to identify the injunctive relief she seeks.
- Custodian staff defendants' motion to dismiss plaintiff's eighth and ninth causes of action
17 is **GRANTED** because the complaint fails to allege facts demonstrating that plaintiff
18 complied with the California Government Claims Act ("GCA"). Plaintiff may amend her
19 complaint if she can allege facts demonstrating that she complied with, or is excused from
complying with, the GCA.
- However, custodian staff defendants' motion on Eleventh Amendment grounds is **DENIED**.
20 California Government Code Section 815.2(a) does not grant the custodian staff
21 defendants Eleventh Amendment immunity. *See Demery v. Kupperman*, 735 F.2d 1139,
22 1146–47 (9th Cir.1984), *cert. denied*, 469 U.S. 1127 (1985) (holding that an
23 indemnification arrangement between a state officer and the state was a "purely intramural
arrangement" and that such arrangement did not "turn into an extension of sovereign
immunity.")
- Custodian staff defendants' motion to dismiss plaintiff's request for injunctive relief is
24 **GRANTED WITH LEAVE TO AMEND**. Plaintiff has not alleged facts sufficient to connect the
defendants' acts to the alleged retaliation. Further, plaintiff failed to identify the injunctive
relief she seeks.
- At the hearing plaintiff explained that defendant Mariah Alvarado was prematurely named
as a party. Thus, the Court **DISMISES WITHOUT PREJUDICE** all claims against Alvarado.

25 Plaintiff shall file an amended complaint by **SEPTEMBER 10, 2021**. Defendants shall
26 respond to the amended complaint by **SEPTEMBER 24, 2021**.

27 This Order terminates Docket Numbers 14 and 16.

28 **IT IS SO ORDERED.**

Dated: August 11, 2021


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE